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7
8 **US DISTRICT COURT**

9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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14 **LIBERI ET AL,**

) **CASE NO.: 11-CV-00485**

15 **PLAINTIFF,**

)

16 **VS.**

) **HON. ANDREW GUILFORD PRESIDING**

17 **TAITZ AT AL,**

) **Motion to dismiss the first amended**

18 **DEFENDANT**

) **complaint in its entirety under rule 12(b)6**

20) **DATE October 10, 2011**

21) **TIME 10:00**

22) **COURTROOM 10 D**

23)

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27 **Motion to dismiss the complaint in its entirety on 12B6-Failure to state a claim for relief**

PROCEDURAL HISTORY

This court has granted "Law Offices of Orly Taitz" (hereinafter LO) leave of court to file a 12(b)6 motion to dismiss this first amended complaint. Plaintiffs' attorney Philip J. Berg (Hereinafter Berg) originally stipulated, that he will dismiss the complaint against LO and leave of court was requested and granted to file such a stipulation, however later Berg stated, that he refuses to dismiss with prejudice. He was willing to dismiss without prejudice. Dismissal without prejudice does not give the defendant peace of mind and relief. This is particularly true as Berg tends to sue not only the party to dispute but any and all entities and relatives of opponents, in this case relatives of individuals, who blew the whistle on Berg, Liberi and Ostella, plaintiffs herein, there was a prior dismissal in this case without prejudice and with a certain stipulation and prior stipulation agreement was breached.

This complaint was filed in May of 2009, two and a half years ago and Berg included in the original complaint as additional defendants Yosef Taitz, the husband of attorney Orly Taitz, Caren Hale, wife of talk show host Ed Hale (Hale case was moved to TX), Todd Sankey, son of investigator Neil Sankey. Berg previously stipulated to dismissal of Mr. Taitz with a stipulation, that prior to bringing him back into the case "the plaintiffs will seek a leave of court and a decision by the court, that Plaintiffs have established evidence sufficient to support a cognizable claim" against Mr. Taitz. (Exhibit 1) In violation of stipulation and without a finding by this court, that Plaintiffs established such evidence Berg joined Mr. Taitz as a defendant. With that in mind Defendants cannot agree to dismissal without prejudice and a stipulation and the Plaintiffs refuse to dismiss their complaint against Law offices of Orly Taitz with prejudice. As such, LO is filing this 12(b)6 motion to dismiss first amended complaint against it in its entirety for failure to state a claim for relief and seek dismissal with prejudice and without a leave to amend.

1 Additionally, previously in the interest of judicial economy, Orly Taitz, who is both an attorney
2 and Doctor of Dental surgery, and represents both "Law offices of Orly Taitz" and Orly Taitz,
3 inc, her dental office, and asked for leave of court to file one 12(b)6 motion to dismiss the
4 complaint against both Law offices of Orly Taitz and Orly Taitz, inc, her dental practice. Due to
5 a docketing error by the clerk of the court, this court erroneously believed, that Orly Taitz, inc
6 filed an appeal of the original antiSLAPP motion. This error was corrected by the docketing
7 clerk, however leave of court to file 12(b)6 motion on behalf of Orly Taitz, inc was not granted
8 yet. As such, not to be seen as engaged in stalling, she is filing this motion on behalf of Law
9 offices of Orly Taitz only. This motion to dismiss the complaint in its' entirety against LO is
10 based on the memorandum of points and authorities attached herein, exhibits and oral argument
11 to be held during the motion hearing.
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14 **MEMORANDUM OF POINTS AND AUTHORITIES**

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Background and history of the case

Complaint at hand was filed by plaintiff Pennsylvania attorney Philip Berg, his assistant Lisa Liberi and web master Lisa Ostella, who for a short time was a volunteer web master for defendant Orly Taitz, but who is currently assisting Berg, as well as their affiliated entities. Berg

1 is suing attorney Taitz, her not for profit foundation "Defend Our Freedoms"
2 foundation"(Hereinafter DOFF), her law office, her dental office, her husband, her husband's
3 employer, as well as Neil Sankey, investigator she is working with, Sankey's son, all of the
4 database companies: Lexis Nexis, Choice Point, Intellius and computer giant Oracle to boot.
5 Three years ago Berg, Taitz and Berg's local co-counsel California attorney Gary Kreep
6 maintained similar civil rights legal actions. All three of them: Berg, Kreep and Taitz maintain
7 similar web sites, which contain pay-pal buttons allowing donations by supporters. While Berg
8 and Kreep did not bring new cases for about two years, Taitz continued working in the field and
9 brought new cases, with new plaintiffs, new angles and legal theories and new explosive
10 evidence. As such media has called her a leader of the movement, featured her in thousands of
11 TV, radio and newspaper interviews in U.S. and around the world and supporters and donors
12 flocked to her. At the same time donations to Berg and Kreep fizzled.

15 In November of 2008 Lisa Ostella approached Taitz and offered her to create a blog (web site)
16 for Taitz foundation DOFF. In March of 2009 donors reported to Taitz problems with Pay-pal
17 donations. Taitz had other concerns in regards to Ostella using the web site of foundation for
18 sales of T-shirts and other financial endeavors, where Ostella did not provide Taitz, president of
19 DOFF, with any accounting or revenues for DOFF. Taitz advised Ostella, that she will be
20 transferring to another web master. Instead of providing a smooth transfer Ostella locked Taitz
21 out of the old web site for the foundation and used the web site as well as list of donors to
22 continuously seek donations, which went to Ostella, not DOFF, Ostella also used the old website
23 to denigrate Taitz and promote competing attorney Berg. Taitz was forced to create a new web
24 site and lost significant amount of donations due to actions of Ostella. Taitz wrote to attorney
25 Berg and asked him to cease and desist providing patronage to Ostella, who was diverting funds
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1 from Taitz and DOFF. Taitz also advised Berg, that she received a report from a licensed
2 investigator Sankey, that showed that Berg's assistant Lisa Liberi has a lengthy criminal record
3 with 27 charges and 10 felony convictions of forgery of documents and theft. Taitz advised Berg,
4 that some of the evidence, that Berg brought in his cases was included by Taitz by reference in
5 her case and she was concerned about the veracity of those documents, considering Liberi's
6 recent conviction of forgery. She also advised Berg of danger to the public in Liberi's
7 involvement in fund raising considering her convictions of grand theft. Berg never responded,
8 though he later confirmed receipt of the e-mail. Taitz started a new web site, where she advised
9 her supporters and donors, that the old web site was taken over by the former volunteer web
10 master Ostella and that any donations given to the old web site will not benefit DOFF as Ostella
11 replaced Taitz pay-pal account with her own private account in connection to the pay-pal button
12 on that old web site. Taitz also posted on her web site a report by investigator Sankey, which
13 contained true and correct copy of Liberi's criminal record, that he lawfully obtained from
14 reputable databases gathering records from reputable public sources, such as California Superior
15 court and bankruptcy court.
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19 Within two weeks of publication Berg, Liberi and Ostella filed this legal action in Pennsylvania,
20 claiming defamation and invasion of privacy. In verified complaint Plaintiffs attempted to create
21 an impression that Liberi is a different person, an individual, residing in PA and working in
22 Berg's office, who was defamed by the allegations of criminal record. In December of 2010 at a
23 motion hearing before judge Robreno in Eastern District of PA during cross examination
24 conducted by Taitz, Liberi admitted, that she was indeed a convicted felon, who was convicted in
25 2008 in California, Ostella admitted, that she indeed locked Taitz out of the old web site for
26 DOFF and replaced Taitz pay-pal account with her own. (Exhibit 2 Memorandum by judge
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1 Robreno). Judge Robreno found Berg, Liberi and Ostella "evasive on the stand" and "not
2 believable as witnesses".

3 In April of 2011 this case was transferred to CA and Taitz immediately filed an AntiSLAPP
4 motion to dismiss the complaint in its' entirety. While the AntiSLAPP was pending, Plaintiffs
5 filed a first amended complaint, doubling the original 86 page complaint to 172 page complaint
6 and claiming that they need to adjust the complaint to CA statutes, even though the original
7 complaint was based on CA statutes.
8

9 FAC contains 20 causes of action, claims #1-11 relate to LO.

10 **STANDARD FOR RULE 12(B)(6)**

11 The standard is Twombly/Iqbal (standard, of pleading, which requires a complaint to contain
12 sufficient factual allegations to show a plausible claim for relief. Twombly/Iqbal teaches that a
13 defendant should not be forced to undergo costly discovery unless the complaint contains enough
14 detail... to indicate that the plaintiff has a substantial case. Ashcroft v Iqbal 129 s. Ct. 1937, 1940
15 (2009) (citing Bell atl. Corp. v. Twombly, 550 U.S. 554, 555 (2007)
16

17 **THE COMMUNICATIONS DECENCY ACTS IMMUNIZES TAITZ AND HER**
18 **AFFILIATED ENTITIES FROM LIABILITY ARISING OUT OF HER PUBLICATION**
19 **OR REPUBLICATION OF INFORMATION RECEIVED FROM ANOTHER**
20 **INFORMATION CONTENT PROVIDER.**
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22 Plaintiffs' 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th causes of action arise out of Taitz alleged
23 publication and re-publication of a report prepared by licensed investigator Sankey for internet
24 magazine WorldNetdaily editor Bob Unruh and cc-ed to attorney Taitz.
25

26 This case was filed only a couple of weeks after publication by Taitz of the report. Plaintiffs'
27 allegations in the first amended complaint are sufficient to establish statutory immunity under the
28

1 Communications Decency act. In ¶68 of the first amended complaint, Plaintiffs adopted Taitz
2 alleged web posting, that "the information she was obtaining came from databases: Lexis Nexis
3 and Choice Point. (FAC ¶68). Plaintiffs followed up that allegation with another allegation that
4 "defendant Orly Taitz already had Liberi and Ostella's private information from the Reed
5 Defendants and Defendants Intellius, Inc(FAC¶70). So, based on Plaintiffs' own allegations in
6 the FAC, under the Communications Decency Act Taitz or her law office LO, as a user of an
7 interactive computer service, cannot be treated as the publisher or speaker of information
8 provided by another information content provider such as Lexis Nexis, Intellius and Choicepoint.
9 What is more, Plaintiffs admit that Neil Sankey first circulated the article, which claimed that
10 Liberi had an extensive criminal record going back to the 90s(FAC ¶63) and that it was Sankey,
11 who provided Taitz with the e-mail address containing Liberi's information(FAC¶69).

12
13
14 The Communications Decency act of 1996 provides that:"no provider or user of interactive
15 computer service shall be treated as the publisher or speaker of any information provided by
16 another information content provider." (47 U.S.C. §230(c)(1)) "No cause of action may be
17 brought and no liability may be imposed under State or local law that is inconsistent with this
18 section (§ 230(e)(3)) The California Supreme Court analyzed the Communications Decency Act
19 in the context of SLAPP suits in a very similar actions in Barrett v Rosenthal (2006)40 Cal.4th
20 33, 51 Cal. Rptr. 3d55. In this case the court has granted the motion to dismiss the complaint
21 brought against Ilana Rosenthal, who similarly to Taitz had a blog and a foundation and
22 discussed matters of public interest. Even the most harsh statements made by Rosenthal about
23 the Plaintiff were found to be immune under 47U.S.C. §230(c)(1). by its terms section 230
24 exempts Internet intermediaries from defamation liability for republication (Barrett v. Rosenthal
25 (2006)40Cal4th at 63. As such any and all publications made by Taitz based on information
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1 obtained by Sankey provides Taitz, LO and all affiliated entities with complete immunity under
2 470U.S.C. §230 and claims 1, 2, 3, 4, 5, 6, 7, 8, 9 need to be dismissed with prejudice and
3 without leave to amend against LO and all Taitz affiliated parties.

4 **CLAIMS 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11 ARE BARRED BY PRIVILEGE AFFORDED BY**

5 **CALIFORNIA CIVIL CODE SECTION 47**

6 CCP §47 provides in pertinent part: "A privileged publication or broadcast is one made:...(b)In
7 any...(2)judicial proceeding, (3)in any other official proceeding authorized by law, or 94) in the
8 initiation or course of any other proceeding authorized by law, or (4) in the initiation or course of
9 any other proceeding authorized by law..." The fact that the publication is a falsehood is not the
10 determining factor, and the privilege encompasses even perjury, so long as the publication of
11 perjured matter falls within the statutory requirements(Flatley c Mauro (2006) 39 Cal. 4th 299,
12 321-24, 46 Cal Rptr 3d 606-explaining rationale and relation to SLAPP statute, Rusheen v Cohen
13 (2006) 37 Cal4th 1048, 1058, 39 cl Rptr 3de 516-collecting cases on point). The privilege is
14 absolute and protects publications made with actual malice or with intend to do harm even if for
15 example, the publication is made outside the courtroom and without invocation of any court
16 function. While all of statements made by Taitz were truthful, in good faith and in public
17 interest, even if it wasn't the case, privilege would've applied. Complaint lists communications
18 made to FBI ¶62, FBI and Department of Justice ¶77, report with Orange County sheriff¶86,
19 publication by Taitz pleadings made in judicial proceedings ¶88, 89, communication with Santa
20 Fe Police department ¶94, communications to various police departments ¶115, Taitz filings in
21 this matter ¶117, pleadings in a judicial proceedings¶118, communications with Santa Fe police
22 department ¶123, filings in this matter ¶124, filing with San Bernardino Superior court ¶125.
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1 This shows that claims 1-11 against Taitz, LO and affiliated entities need to be dismissed with
2 prejudice and without leave to amend.

3 Further defendants will provide additional analysis under separate claims. Defendants will start
4 with the sixth cause of action, as it is representative of the modus operandi of the Plaintiffs and
5 their attorneys and is a financial centerpiece of the complaint.
6

7 **CLAIM #6**

8 Plaintiffs are suing for alleged violation of California IPA Cal Civ. Code §1798.85, however
9 Plaintiffs are egregiously defrauding the court by claiming, that this statute provides for statutory
10 penalty and they inserted in their complaint a quotation regarding \$3,000 civil penalty from a
11 different statute §1798.84 which relates to governmental agencies, who maintain records of their
12 customers. Their contention is that a social security number, that was published in report by
13 investigator Sankey was read by a million people. They multiplied \$3,000 civil penalty by a
14 million and they claim that 19 individuals and companies they are suing, owe them three billion
15 dollars. Attorneys Berg and Kreep are egregiously defrauding this court by cutting and pasting
16 a quotation in regards to statutory penalty from an unrelated statute, that relates to governmental
17 agencies to a cause of action that is filed under a different statute, that relates to individuals and
18 based on this fraud they are trying to extort monies from all of the defendants, believing that the
19 defendants will simply take the quotation of the statutes at its value and that they and the court
20 will not notice this fraud.
21

22 This is not a simple omission, this is egregious and malicious fraud in light of the following
23 facts:
24

25 a. in their original complaint Plaintiffs sued under Ca statute §1798.81. In her prior antiSLAPP
26 motion Taitz disclosed to the court, that §1798.81 relates to governmental agencies, and the
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1 Plaintiff are improperly suing defendants, who are not governmental agencies under that statute,
2 so Plaintiffs filed an amended complaint, where they sued under §1798.85, which does not have
3 any statutory damages but cut and pasted penalty from a different statute.

4 b. in the 9th and 10th causes of action Liberi admits to being a felon on probation and claims,
5 that complaints brought by Taitz to her probation status hearing were improper. As such
6 attorneys on the case are well aware, that Liberi is a felon on probation. Minimal investigation
7 required under rule 11 would show that Liberi's criminal case FWV 028000 contains a fact
8 pattern of her engaging in the same activity: cutting and pasting parts of documents and creating
9 "documents" for which she was convicted in March of 2008 of forgery of an official seal, attempt
10 to file forged/altered documents and grand theft and received 8 year prison term, reduced to
11 probation due to alleged health problems. Two licensed attorneys are placing their name and bar
12 license under pleadings, drafted by a recently convicted forger, and they are doing so with either
13 lack of minimal investigation or knowingly and maliciously.

14 Due to the fact, that the statute under which they are suing does not provide for any statutory
15 civil penalty, Plaintiffs were supposed to provide a legal theory, which would show, how alleged
16 violation of statute damaged the Plaintiffs, they were supposed to plead actual and proximate
17 causation and damages envisioned by the statute. They provided none of the above. They are
18 claiming statute violation against Ostella and Liberi, however they did not plead any facts in
19 regards to Ostella. In regards to Liberi claims lack any plausibility. Under rule 12(b)6 complaint
20 has to be plausible. This complaint was filed about 2 weeks after publication of Sankey report,
21 **which listed Liberi's criminal record**. Is it plausible to believe, that somebody would read this
22 report and would want to assume an identity of an individual, who was recently convicted of
23 multiple felonies, who according to a report is on probation and any violation of probation can
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1 land her back in prison? Why would anyone want to attempt to assume her identity? For what
2 purpose? To run the risk of being thrown in prison for 8 years instead of Liberi? This is
3 completely implausible.

4 If one were to assume, that there is somewhere an insane person, who wants to assume an
5 identity of a felon on probation, who is also in bankruptcy, the question remains, how did he or
6 she damage Liberi? How within 2 weeks from the time the report was posted and the complaint
7 was filed, this imaginary individual managed to damage Liberi? Damages have to be envisioned
8 by the statute: it would include for example someone using Liberi's name and social security
9 number assuming her identity and stealing monies from her bank account, however Liberi was in
10 bankruptcy, there was nothing to steal and the complaint does not plead any facts, that would be
11 consistent with damages envisioned by this statute. Additionally, there is no pleading of any
12 nexus, any actual and proximate causation between alleged violation of the statute and imaginary
13 damages. Moreover, Liberi personally entered her two unredacted full social security numbers in
14 her two applications for bankruptcy in California in 2000 and 2002, where her two different full
15 unredacted social security numbers were and are currently on display in public records readily
16 available to the public for a period of 10 years. (Exhibit 3) Additionally, Liberi has provided her
17 full unredacted social security number in her declaration made in her criminal case FWV
18 028000, which happens to be a different number. (Exhibit 4). If arguendo there was ever any
19 damage from published full social security number, it is more plausible, that it would be from
20 such posting in the records readily available to the public for 10 years and not from a blog
21 posting available for a day or two.

22 Based on the fact, that above statute does not allow for any statutory penalty and based on a fact,
23 that Plaintiffs did not provide any legal theory to connect their alleged damages to alleged
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1 violation of statute, defendants respectfully request to dismiss this cause of action without leave
2 to amend, as the claim is fatally flawed. After two and a half years of litigation and thousands of
3 pages of pleadings giving Plaintiffs a leave to amend, would not serve the interest of justice and
4 would only invite new fraudulent allegations. In the interest of judicial economy the court is
5 requested to dismiss this cause of action against all defendants.

6
7 Additionally, Defendants believe that actions of Plaintiffs' attorneys in cutting and pasting civil
8 penalty of unrelated statute to fraudulently claim 3 billion dollars in a statute, that provides for
9 no statutory penalty at all, is so egregious and sanctionable that Defendants are asking Your
10 Honor, as a former President of CA bar association, to forward his findings to the respective bar
11 associations. This is particularly important, as according to the official public web site of the
12 Disciplinary Board of the PA Supreme court Berg was recently tried for alleged egregious ethics
13 violations and post trial meeting of the parties is scheduled for September 19, 2011, on a case
14 involving similar violations of the professional ethics and which also involves the same
15 convicted forger Lisa Liberi as a main witness for Berg.
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19 **Claim#1**

20 In its' September 12, 2011 order to dismiss without prejudice and without leave to amend
21 defendant Oracle, this court already ruled that alleged violation of First and Fourteenth
22 amendments is not possible, as such violations relate only government actors. None of the
23 defendants is a governmental actor, as such alleged violation of the First and Fourteenth
24 amendment is totally frivolous and in the interest of judicial economy should be dismissed
25 against all of the defendants.
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1 Second part of this cause of action is invasion of privacy, which Plaintiffs repeat in several
2 following causes of action. For invasion of privacy under the California constitution plaintiff
3 "must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable
4 expectation of privacy in the circumstances; and (3) conduct by the defendant constituting
5 serious invasion of privacy. Hill v. National Collegiate Athletic Assn., 7 Cal. 4th 1, 39-40
6 (1994). Plaintiffs' state that their privacy interests were violated by "intentionally and illegally
7 accessing, disclosing and distributing" Plaintiffs' private information (FAC ¶197). Plaintiffs did
8 not plead one single piece of information, that was private, that was illegally accessed and
9 disclosed by the defendants. The reason they are making broad allegations, is because they
10 know, that no such piece of information exist. Licensed investigator Sankey provided in his
11 report Liberi's criminal record from Superior court of California, which is available on line as
12 well as her public record from bankruptcy court, which is available on line.

15 2. Plaintiffs do not have a reasonable expectation of privacy in their public records.

16 3. The fact, that attorney Taitz posted information that was provided to her by a licensed
17 investigator, who works with reputable national database companies, who legally obtain
18 documents from public records, such as Superior court of California and Bankruptcy court, does
19 not constitute a conduct, tantamount to a serious invasion of privacy. Moreover, as an attorney
20 and an officer of the court Taitz was obligated to warn her supporters and donors, that her old
21 web site was taken over and the fact that a person with recent serious convictions of grand theft
22 has access to their financial information.

25 Plaintiffs failed in all three prongs of the test.

26 If Plaintiffs allege a claim for invasion of privacy under a common law theory of intrusion upon
27 seclusion, plaintiff must establish: "(1.) intrusion upon a private place, conversation or matter,
28

1 (2) in a manner highly offensive to a reasonable person." Shulman v Group W productions, inc.,
2 18 Cal, 4th 200,232 (1998)

3 Again, plaintiffs failed to plead one single fact, that was private, that was not already public, at
4 the time Taitz posted Sankey report. The fact that Taitz posted true and correct criminal record of
5 Liberi, in order to warn her donors, does not represent a conduct highly offensive to reasonable
6 person. When one has a serious recent conviction of forgery and grand theft, she might
7 reasonably expect, that this record might be posted to warn the public. If such publication would
8 be considered offensive, than the court system and probations department of the State of
9 California and sister states would drown in law suits from felons.
10

11 As the plaintiffs failed to plead any admissible plausible facts to substantiate their claim based on
12 the above the first claim needs to be dismissed with prejudice. This claim needs to be dismissed
13 without leave to amend, as there are no facts, that could cure the deficiency and Plaintiffs had
14 two and half years to cure the deficiency. In the interest of judicial economy this claim needs to
15 be dismissed against all defendants.
16

17 **Claim # 2**

18 Plaintiffs allege public disclosure of private facts, which require proof of "(1) public disclosure,
19 (2) of a private fact, (3) which would be offensive and objectionable to the reasonable person and
20 (4) which is not of legitimate public concern" Shulman v Group W Productions, inc., 18 Ca.
21 4th200, 214 (1998).
22

23 Similarly to Claim #1 in their pleadings the plaintiffs did not plead any facts, that were private,
24 that were not already in public records. Plaintiffs did not plead any facts, that would show, that
25 publication was offensive and objectionable to a reasonable person and is not a legitimate public
26 interest. While clearly Plaintiffs wanted to hide from the public the fact, that Ostella locked Taitz
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1 out of the website of her foundation and that Liberi has a criminal record of forgery and theft,
2 reasonable person would understand, that publication of this information is understandable, was
3 expected and is clearly in public interest in order to warn the public, that an individual with such
4 record has access to nation-wide donations drive. Additionally, as a President of DOFF Taitz had
5 to apprise the public that their donations given to DOFF on old web site did not go to DOFF, as
6 Ostella locked Taitz out and replaced the pay-pal account connected to the old web site. This is
7 clearly the matter of public interest.
8

9 As such, as the Plaintiffs failed to satisfy the three prong test, this cause of action needs to be
10 dismissed with prejudice and without leave to amend, as the pleadings cannot be cured by an
11 amendment and the plaintiffs had two and a half years to do so. In the interest of judicial
12 economy the second cause of action needs to be dismissed against all defendants.
13

14 **Claim #3**

15 In claim #3 Plaintiffs allege false light, which requires the following: (1) defendant disclosed
16 information about plaintiff that actually false or created a false impression; (2) one or more
17 persons found the information to state something that is highly offensive that would have a
18 tendency to injure plaintiff's reputation; (3) defendant acted with malice by clear and convincing
19 evidence; and (4) plaintiff was damaged by the disclosure. Solano v Playgirl, inc., 292 F.3d
20 1078, 1082 (9th Cir.2002)
21

22 Again, the plaintiff is talking about Taitz posting a report about her criminal record and about
23 actions of Ostella locking Taitz out of her web site. The Plaintiffs never plead any specific facts,
24 that are not true. Plaintiffs did not satisfy the second prong, as they did not plead anything highly
25 offensive, that would injure the reputation of the Plaintiffs. The fact, that Liberi's criminal record
26 was published, was not offensive, as it was a truthful statement and it definitely did not lower her
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1 reputation, as her reputation was exactly that, a reputation of a convicted document forger and a
2 convicted thief. Lastly, Plaintiffs did not plead any plausible facts, that would show malice on
3 part of Taitz. Publishing ones criminal record to warn the public does not represent malice.

4 As such this claim needs to be dismissed with prejudice and without leave to amend. In the
5 interest of judicial economy it needs to be dismissed against all defendants.
6

7 **Claim# 4**

8 In claim #4 Plaintiffs allege that defendants' publication of news-related information regarding
9 plaintiffs is a misappropriation of their likeness under Ca Civil code §3344. Plaintiffs Liberi and
10 Ostella claim, that Taitz's blog posts discussing Liberi's criminal records and discussing Taitz
11 dealings with Ostella are a violation of their publicity rights, a right usually reserved for people,
12 who make a living off their image. See Lugosi v. Universal Pictures, 25 Cal. 3d 813(1979). The
13 first two elements of a cause of action are that the first two elements of a cause of action are that
14 (1) the defendant used a plaintiffs identity (2) for the defendant's commercial advantage.
15 Montana v. San Jose Mercury News, Inc., 34 Cal. App. 4th 790, 792 (1995).
16

17 Identity and likeness of individuals, typically celebrities, movie stars, fashion models is typically
18 used to promote a product, make this product more appealing. Liberi and Ostella are not movie
19 stars, not beauty queens. Prison mug shot of Lisa Liberi did not make any product more
20 appealing and there was never any picture of Ostella. In this case Taitz posted information about
21 Liberi and Ostella not to sell a product, but to warn the public about criminal past of Liberi and
22 diversion of funds by Ostella. What was portrayed by Taitz, was not likeness of Liberi and
23 Ostella, but their actions, which were of public concern. There is nothing unique or identifiable
24 about either Liberi or Ostella that would lend to a cognizable right of publicity.
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1 In reality, the opposite is true. Liberi used likeness and trade mark of Taitz's not for profit
2 foundation and solicited donations, while Liberi and Berg benefitted from those actions of
3 Ostella, as she locked Taitz out of her old web site and used that web site to promote law office
4 of Berg. This will be addressed in cross complaint against the defendants.

5 Liberi and Ostella failed and unable to assert causes of action under the common law right of
6 publicity, and misappropriation of likeness under CA §3344. As such this claim needs to be
7 dismissed with prejudice and without leave to amend. In the interest of judicial economy it needs
8 to be dismissed against all defendants.
9

10 **Claim #5**

11 Plaintiffs allege violation of section 1798.53 of California Information privacy Act ("IPA"),
12 which allows a claim against anyone "who **intentionally** discloses information, not otherwise
13 **public**, which they know or should know was obtained from personal information maintained by
14 a state agency or from "record" within a system of records... maintained by a federal
15 government agency. "
16

17 Again, Plaintiffs did not satisfy any prongs of the test
18

19 **1. they did not show, that the information was not otherwise public.** Actually, they cite a
20 report by investigator Sankey, which comes from public records, as evidenced on the face of the
21 report.
22

23 **2. Plaintiffs did not plead any facts to show, that Taitz knew of should have known that the**
24 **information came from personal records.** As a matter of fact, based on the complaint Taitz
25 relied on the report by a licensed investigator, which she reasonably believed to be compiled
26 from public records stored in the databases of reputable agencies, as indeed the report shows
27 public records from Superior court of California, records of Liberi's criminal case, her civil cases
28

1 and her bankruptcy cases. **There is nothing in the pleadings, that would show that**
2 **defendants knew or reasonably believed that information was not otherwise public.**

3 As such Plaintiffs failed to satisfy the requirements of the test and the claim#5 needs to be
4 dismissed with prejudice and without leave to amend. In the interest of judicial economy it needs
5 to be dismissed against all defendants.

6
7 **Claim #7**

8 In the seventh claim plaintiffs allege three causes of action, two of which have no basis for relief
9 under California law: Cyber-Harassment and Cyber-Bullying. See generally cyber-harassment
10 and cyber-bullying. See generally, United States v. Drew, 259 F.R.D. 449 (C.D. cal. 2009). the
11 final tort of cyber-stalking is organized to the extend that it merely an allegation of stalking,
12 codified under California civil code §1708.7. In order to establish the tort of stalking Plaintiff
13 must allege the following four elements (1) that LO "engaged in a pattern of conduct the intend
14 of which was to follow, alarm or harass them"; (2) that, as a result of the alleged pattern of
15 conduct, Plaintiff reasonably feared for their safety, or that their safety, or that of an immediate
16 family member; (3) that part of the alleged pattern of conduct was a credible threat with the
17 intention of placing Plaintiffs in reasonable fear for their safety, or that of an immediate family
18 member; and (4) on at least one occasion, the Plaintiff clearly and definitively, but
19 unsuccessfully, demanded that the defendant stop the pattern of conduct. Cal Civ Code §1708.7
20
21 None of the prongs were satisfied or could be satisfied in this case.

22
23 This case revolves around publication made by defendants regarding behavior of the Plaintiffs.
24
25 The complaint is void of any facts, that would show defendants ever following or harassing any
26 of the defendants. The only credible allegation consists of fact that attorney Taitz published
27 information about her website being taken over by webmaster Ostella and about criminal history
28

1 of Liberi, assistant of Berg. Taitz, also apprised her supporters of the hearing in this case and
2 pleadings submitted. All of the publications represented matter of public concern. Those
3 publications might have made Liberi alarmed that her probation might be revoked. Berg might
4 have been alarmed that he would be found guilty of ethical violations at his disciplinary board
5 trial, as Liberi was his main witness, Ostella might have been alarmed that there might be
6 charges brought against her for diverting funds from DOFF, but there is no credible fact plead by
7 the Plaintiffs to show, that the Plaintiffs were afraid for their lives. In regards to the fourth prong,
8 the only request to cease and desist was actually made by Taitz, where Taitz requested, that Berg
9 cease and desist providing patronage to Ostella, who was diverting funds from DOFF.
10

11 While plaintiffs throw in the pot general unsubstantiated outlandish allegations ¶275 claiming
12 that Taitz called for political purging of Liberi and Ostella, "Taitz openly threatened to destroy
13 Liberi and get rid of her and have Liberi's children professionally kidnapped", none of these
14 allegations was substantiate, none was credible or in any way plausible. It is more plausible, that
15 this is a product of criminal mind of Liberi, who is measuring people around her by her
16 standards, who was the one concocting these pleadings, and who included those outlandish
17 slanderous statements without any credibility and plausibility in order to retaliate against an
18 attorney, who outed her and disclosed to the public her recent serious convictions.
19

20 To establish a "credible threat", the allegations must be supported with independent
21 corroborating evidence such that the factual allegations must be enough to raise a right of relief...
22 above the speculative level... on the assumptions that all the allegations in the complaint are true
23 even if doubtful in fact).' In short it might allege "enough facts to state a claim to relief that is
24 plausible in its face." Bell Atlantic Corp v Twombly, 550 U.S. 544, 556-557, 570 (2007)
25 (parenthesis in original; emphasis added). Further, the allegation that some unspecified
26
27
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1 "supporter" of Taitz informed Ostella that her children will be kidnapped is farcical and should
2 be disregarded; even if one were to assume arguendo that someone made this statement, there is
3 no credible link to Taitz or LO.

4 There are insufficient allegations, much less credible allegations, that any of the defendants ever
5 threatened any of the defendants and this claim needs to be dismissed with prejudice and without
6 leave to amend. In the interest of judicial economy this cause of action should be dismissed
7 against all defendants.
8

9 **CLAIM #8**

10 Plaintiffs allege defamation per se, slander and libel per se. To establish defamation per se
11 Plaintiffs need to plead that publication was false, that the defendants knew it to be false and
12 intentionally published false defamation.
13

14 Plaintiffs did not satisfy any of the prongs of the test. They are talking about the publication by
15 the defendants, but did not specify any specific fact, which would actually be wrong. They are
16 talking about Taitz publishing Liberi's criminal record, trying to create an impression, that it
17 might be defamatory, however they never state in the pleadings, that Liberi was not convicted of
18 listed crimes. Moreover, in the claim #9 and 10 they actually mention, that Liberi was on
19 probation. If Liberi was not a felon and publication of crimes were defamatory, why was she on
20 probation? Moreover, during December 20, 2010 hearing Liberi and Ostella admitted that Liberi
21 indeed had felony convictions in 2008 and Ostella locked Taitz out of the website for her
22 foundation and replace Taitz pay-pal account with her own.
23
24

25 Even, if arguendo some minor part of the report was not correct, Plaintiffs did not plead any facts
26 to show, that defendants knew that any part of the report was not correct and intentionally
27 published incorrect information. As such the eighth cause of action needs to be dismissed with
28

1 prejudice and without leave to amend. In the interest of judicial economy this cause of action
2 needs to be dismissed against all defendants.

3 **CLAIM #9**

4 In claim #9 Plaintiffs allege Intentional infliction of emotional distress, which would involve
5 outrageous conduct by the defendant with the intension of causing or reckless disregard of
6 extreme emotional distress, and plaintiffs injuries were actually and proximately caused by the
7 defendant's outrageous conduct. *Cochran v Cochran* 65 Cal. App 4th 488, 494 (1998). Conduct is
8 outrageous only if it exceeds all bounds of that usually tolerated in a civil community" *KOVR-*
9 *TV, inc v Super Ct.*, 31 Cal. App 4th 1023, 1028 (1995)
10

11 Again Plaintiffs failed to satisfy any of the prongs of the test

12 Plaintiffs' cause of action for IIED is based entirely upon the prior causes of action, meaning that
13 the IIED cause of action as to Orly Taitz and all affiliated entities, including LO is completely
14 reliant upon defendants' alleged tortious behavior in prior causes of action, such as alleged
15 invasion of privacy, disclosure of private facts, placing Plaintiffs in false light, defaming
16 Plaintiffs, maliciously prosecuting Liberi, and cyber-stalking. The mere allegation, that the
17 defendant acted tortiously, however, is not enough to establish a cause of action for IIED. The
18 court in Cochran v Cochran, 65 Cal. App.4d 488, 496 (Cal. App. 2d Dist.1998), citing
19 restatement (second) Torts §46 cmt.d (1965) stated:
20

21 In evaluating whether the defendant's conduct was outrageous, "it is ...not enough that the
22 defendant has acted with an intend which is tortious or even criminal, or that he has intended to
23 inflict emotional distress, or even that his conduct has been characterized as malice or a degree
24 of aggravation which would entitle the plaintiff to punitive damages for another tort Liability has
25 been found only where the conduct was so outrageous in character, and so extreme in degree as
26 to go beyond all possible bounds of decency, and be regarded as atrocious, and utterly intolerable
27 in a civilized society." (Emphasis added.)

28 Additinally, *Cochran supra*, 65 Cal App 4th at 497 was unequivocally clear on this subject topic,
that typical hostile unpleasanties are not actionable:...feuds are often accompanied by an

1 exchange of hostile unpleasantries which are intended to sting whoever sits at the delivery end.
2 While the pain inflicted might be real, **the tort of intentional infliction of emotional distress**
3 **was never intended to remove all such barbs. To hold otherwise would needlessly congest**
4 **our courts with trials for hurts both real and imagines which are best resolved elsewhere**
5 (Emphasis added) The tortious conduct alleged does not rise to the level of being beyond all
6 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
7 community", as required under the Restatement (second) Torts §46 nd California law. See Molko
8 v. Holy spirit Ass'n. 46 Cal.3d 1092, 1122(1988). Clearly, this is not sufficient under Iqbal. As
9 such the ninth cause of action needs to be dismissed with prejudice and without leave to amend.
10 Plaintiffs had plenty of time, two and a half years to provide facts to satisfy the requirements of
11 this cause of action, and providing additional time or additional opportunity to amend could not
12 possibly cure the pleading, as the there are no underlying facts that would suggest intentional
13 infliction of emotional distress. In the interest of judicial economy this cause of action needs to
14 be dismissed against all defendants.

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17
18 **CLAIM #10**

19 In claim #10 Plaintiffs allege malicious prosecution cause of action is entirely based upon
20 Defendants' filing of a motion for Emergency Revocation of probation against Liberi in San
21 Bernardino County Superior Court.(FAC 316)
22 First, this tenth cause of action negates prior 9 causes of action, by virtue of filling it Liberi
23 confirms, that she indeed was a convicted felon, that she indeed was convicted in San
24 Bernardino California in 2008 and through March of 2011 was on probation. It shows, that for
25 two and a half years Plaintiffs harassed defendants with a totally frivolous bogus complaint,
26 claiming defamation, even though they were never defamed and Attorney Berg was indeed
27
28

1 employing as his legal assistant a felon, who was recently convicted of forgery and theft, and
2 allowed her to draft pleadings and with her as his assistant conducted a nationwide donations
3 drive. This is particularly egregious, as the original complaint was a verified complaint, filed
4 under penalty of perjury, where Berg and Liberi attempted to create an impression, that Liberi
5 was a different Lisa Liberi, who worked in Berg's office in Pennsylvania, not a convicted felon
6 from California. This in itself a sanctionable conduct by the Plaintiffs and their attorney.

7
8 The malicious prosecution cause of action is based upon a motion that Liberi alleges was
9 wrongfully filed by Taitz.

10 The commission of tort of malicious prosecution requires a showing of an unsuccessful
11 prosecution of a criminal or civil action, which any reasonable attorney would regard a totally
12 and completely without merit, for the intentionally wrongful purpose of injuring another person.
13 Downey Venture v. LMI ins.Co., 66 Cal. App.4th 478, 499 (1998). Malicious prosecution actions
14 require the initiation of an actual full-blown action. As such, subsidiary procedural actions within
15 a lawsuit, such as an application for a restraining order, does not support a claim for malicious
16 prosecution. Adams v Superior court, 2 Cal. App. 4th 521, 528 (1992). As such, it is clear that
17 Taitz's alleged motion for revocation of probation in Liberi's criminal case was not an
18 independent action under the purview of this cause of action.
19

20
21 In Adams, the defendants were being sued by Plaintiff Vu, alleging four causes of action for
22 malicious prosecution and abuse of process. Vu's lawsuit was based on the premise that the
23 attorneys acted tortuously when they attempted to intervene in criminal cases in Santa Clara and
24 Mateo counties, where Vu was attempting to have felony convictions reduced or expunged,
25 which was granted. After both courts granted or expunged the felony charges, defendants filed
26 motions for reconsideration, seeking to bring to the attention of the respective courts Vu's
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28

1 alleged conduct in a fraudulent real estate sale. Both the Mateo County Superior court and the
2 Santa Clara Superior court denied the defendant's motions. Held, that the tort of malicious
3 prosecution requires the initiation of a full blown action as well as its favorable termination for
4 the malicious prosecution plaintiff, neither of which occurred. *ID.* At 528.

5 This case is just like Adams, where there in neither a full blown action initiated by Taitz or a
6 favorable outcome. Because the "prior action" for malicious prosecution has not been alleged,
7 Plaintiffs have failed to sate any facts on which this cause of action may be based, as such it
8 should be dismissed with prejudice and without leave to amend as the defect of pleadings cannot
9 be cured by an amendment. In the interest of judicial economy this cause of action should be
10 dismissed against all the defendants.
11

12 **Claim #11**

13
14 In eleventh claim the Plaintiffs allege abuse of process, which needs to be dismissed, as Plaintiffs
15 failed to identify any process, that has taken place as a result of Taitz's alleged actions.

16 Liberi's abuse of process is again entirely based on defendants' filing of a "Motion for an
17 Emergency Revocation of Probation", with regard to Liberi's probation in San Bernardino
18 Superior Court, which Liberi alleges was wrongfully filed by Taitz (FAC ¶327).
19

20 In order to state a claim for abuse of process, Liberi must establish a substantial use or misuse of
21 a legal process. Loomis v Murphy, 217 Cal App 3d 589, 595 (1990). An abuse of process is an
22 act done in the name of the court and under its authority by use of a legal process for the purpose
23 of perpetrating an injustice. CACI 1520; Woodcourt II, Ltd. V. McDonald Co., 119 Cal App. 3d
24 245, 252 (1981). The court of Appeals in Adams v Superior court, supra, held that one of the
25 bases for sustaining defendants demurrer to Vu's complaint for abuse of process was because the
26 motions filed in criminal cases were denied, and thus did not result in any order or process,
27
28

1 which could be misused by the defendants was not sufficient to support plaintiffs' abuse of
2 process claim. Adams, supra, 2 Cal. App. 4th at 532.

3 The same holding and reasoning should apply here. Even if one were to arguendo assume all of
4 the Plaintiffs' allegations to be true, because Plaintiffs admitted that Judge Sabet denied the
5 motion (FAC ¶316), Liberi has failed to present any facts to support her cause of action for abuse
6 of process since, as a matter of law, no "process" was either issued or misused by Taitz. As such
7 eleventh cause of action should be dismissed with prejudice and without leave to amend as to all
8 defendants.
9

10 **LAW OFFICES OF ORLY TAITZ IS NOT A LEGAL ENTITY AND CANNOT BE A**
11 **DEFENDANT IN A LAW SUIT**
12

13 Again, Plaintiffs' attorneys Berg and Kreep never performed rule 11 minimum investigation and
14 they never checked, if "Law offices of Orly Taitz" is even a legal entity. There is no separate
15 entity under such name: there is no corporation or professional corporation or LLC under the
16 name "Law offices of Orly Taitz". Plaintiffs simply knew that Taitz is an attorney and a dentist
17 and sued her law office and her dental office, which necessitated additional pleadings and
18 expenditure of time and resources for Taitz to respond to the complaints . "A civil action can be
19 maintained only against a legal person...(and)... a nonentity is incapable of being sued. Where a
20 suit is brought against an entity, which is nonexistent, the proceeding is void ab initio and its
21 invalidity can be called to the attention of the court at any state of the proceeding" (Oliver v
22 Swiss Club Tell (1963)222 Cal. 2d 528, 537.) "Accordingly, it is a corollary to this rule that the
23 objection that a plaintiff or defendant is nonexistent is not subject to waiver, as in the case of
24 misnomer or lack of legal capacity, because the defect is jurisdictional." (Id. at p.538.)
25
26

27 **CONCLUSION**
28

1 Claims 1-11 of the FAC need to be dismissed with prejudice and without leave to amend as to all
2 defendants.

3 /s/ Dr. Orly Taitz, ESQ
4

5 **CERTIFICATE OF SERVICE**

6 I declare under penalty of perjury that a true and correct copy of the above pleadings was served
7 on 09.14.2011 via ECF on all the parties in this action.

8 /s/ Dr. Orly Taitz, ESQ

9 Exhibit 1 Stipulation filed on 05.28.2009 in Liberi v Taitz, dismissing Yosef Taitz

10 Exhibit 2 12.23.2010 Order by Judge Robreno

11 Exhibit 3 Request for judicial notice submitted on 07.11.2011, criminal record of Lisa Liberi,
12 bankruptcy record of Lisa Liberi with her full unredacted social security number, which was
13 redacted for this filing

14 Exhibit 4 Request for judicial notice submitted 07.11.2011, declaration of Lisa Liberi with her
15 full social security number (redacted for this filing)